

AMENDED IN ASSEMBLY JUNE 30, 2004

AMENDED IN ASSEMBLY JUNE 17, 2004

AMENDED IN SENATE APRIL 15, 2004

SENATE BILL

No. 1330

Introduced by Senator Murray

February 18, 2004

An act to *add Title 2.7 (commencing with Section 1634) to Part 2 of Division 3 of the Civil Code, and to amend Section 629.51 of, and to add Section 632.8 to,* the Penal Code, relating to invasions of privacy.

LEGISLATIVE COUNSEL'S DIGEST

SB 1330, as amended, Murray. Privacy: interception of communications.

Existing law generally prohibits a person, maliciously and without the consent of all parties to the communication, from intercepting or receiving a communication transmitted between specified communication devices, or from assisting in these acts. Existing law prohibits a person, without consent, from intercepting, receiving, and intentionally recording a communication transmitted between these communication devices, or from assisting in these acts. Further, existing law forbids the intentional and unconsented to eavesdropping on or recordation of a confidential communication, as specified. However, existing law allows specified law enforcement officials to apply for an order authorizing the interception of a wire, electronic pager, or electronic cellular telephone communication, as specified.

Existing law defines "electronic cellular telephone communication" for these purposes to mean any cellular or cordless radio communication.

This bill would make findings and declarations of the Legislature concerning interception of confidential communications, ~~including by use of an embedded automotive telematic device~~. It would limit the term “electronic cellular telephone communication” for purposes of these provisions authorizing law enforcement interceptions of communication by court order. In particular, the bill would specify that the term does not include a confidential communication between parties conducted only in the presence of one another that is intercepted by a cellular or cordless radio telephone or similar device used with the sole purpose of eavesdropping upon or recording that type of communication.

This bill would also prohibit a provider of embedded automotive telematic services from collecting, selling, sharing, transferring, or otherwise disclosing nonpublic personal information, as specified, without the explicit prior consent of the consumer to whom the nonpublic personal information relates, offered in a clear and conspicuous manner, unless the disclosure is necessary to effect, administer, or enforce an agreement with the consumer.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares that existing
2 law forbids the interception, recordation, or transmission of any
3 confidential communication between natural persons made while
4 in each other’s presence where that interception, recordation, or
5 transmission is effected without consent using any machine,
6 ~~instrument, or contrivance. It is the intention of the Legislature in~~
7 ~~enacting the changes to Section 629.51 of the Penal Code in this~~
8 ~~act to make clear that no court order may authorize law~~
9 ~~enforcement interception, recordation, or transmission of any~~
10 ~~confidential communication between natural persons made while~~
11 ~~in each other’s presence where that interception, recordation, or~~
12 ~~transmission is effected without consent using any machine,~~
13 instrument, or contrivance, *except as expressly provided for in this*
14 *chapter*. The Legislature intends the language which speaks to
15 interception of communication by “cellular or cordless radio
16 telephone or similar device” to be read broadly to include all
17 digital, analog, or other modes of transmission of communication,



as well as all media of transfer of communication, ~~including any~~
~~“embedded automotive telematic device” as defined in Section~~
~~632.8 of the Penal Code.~~

SEC. 2. Title 2.7 (commencing with Section 1634) is added to
 Part 2 of Division 3 of the Civil Code, to read:

TITLE 2.7. AUTOMOTIVE TELEMATIC DEVICES

1634. (a) A provider of embedded automotive telematic
 services shall not collect, sell, share, transfer, or otherwise
 disclose nonpublic personal information without the explicit prior
 consent of the consumer to whom the nonpublic personal
 information relates, offered in a clear and conspicuous manner,
 unless the disclosure is necessary to effect, administer, or enforce
 an agreement with the consumer. If the disclosure is made, the use
 of the nonpublic personal information shall be limited to that
 information necessary to effect, administer, or enforce the
 agreement.

(b) For the purposes of this section the following definitions
 shall apply:

(1) (A) “Nonpublic personal information” means personally
 identifiable information (1) provided by a consumer to a provider
 of embedded automotive telematic services, (2) resulting from any
 transaction with the consumer or any service performed for the
 consumer, or (3) otherwise obtained by the provider of embedded
 automotive telematic services. Nonpublic personal information
 shall include any list, description, or other grouping of consumers,
 and publicly available information pertaining to them, that is
 derived using any nonpublic personal information.

(B) Nonpublic personal information does not include publicly
 available information that is generally and readily made available
 to the general public from federal, state, or local government
 records, or disclosures that are required to be made by federal,
 state, or local law or court order, or obtained from a publicly
 available directory where the consumer has voluntarily consented
 to have the information publicly disseminated or listed, such as a
 name, address, or telephone number.

(2) “Personally identifiable information” means information
 that (A) a consumer provides to obtain a product or service, (B)
 about a consumer resulting from any transaction involving a

1 *product or service between the provider of embedded automotive*
2 *telematic services and a consumer, or (C) that the provider of*
3 *embedded automotive telematic services otherwise obtains about*
4 *a consumer in connection with providing a product or service to*
5 *that consumer.*

6 (3) “Necessary to effect, administer, or enforce” means the
7 following:

8 (A) The disclosure is required, or is a usual, appropriate, or
9 acceptable method to carry out the transaction or the product or
10 service business of which the transaction is a part, and record or
11 service or maintain the consumer’s account in the ordinary course
12 of providing the embedded automotive telematic services, or to
13 administer or service benefits or claims relating to the transaction
14 or the product or service business of which it is a part.

15 (B) The disclosure is required or is one of the lawful or
16 appropriate methods to enforce the rights of the provider of
17 embedded automotive telematic services or of other persons
18 engaged in carrying out or providing the product or service.

19 (C) The disclosure is required, or is a usual, appropriate, or
20 acceptable method, in connection with the authorization,
21 settlement, billing, processing, clearing, transferring, reconciling,
22 or collection of amounts charged, debited, or otherwise paid using
23 a debit, credit or other payment card, check, or account number,
24 or by other payment means.

25 (D) The disclosure is otherwise required or specifically
26 permitted by federal or state law.

27 (4) As used in this section, “embedded automotive telematic
28 device” means any system or device that is integrated into a
29 vehicle and combines wireless voice and data communication
30 systems in order to aurally provide a vehicle occupant with
31 information and services from a central service center, and to
32 provide the central service center with information regarding the
33 vehicle, including automatic airbag deployment notification,
34 vehicle tracking, personalized information, real-time traffic data,
35 roadside assistance, and entertainment.

36 SEC. 3. Section 629.51 of the Penal Code is amended to read:

37 629.51. For the purposes of this chapter, the following terms
38 have the following meanings:

39 (a) “Wire communication” means any aural transfer made in
40 whole or in part through the use of facilities for the transmission

1 of communications by the aid of wire, cable, or other like
2 connection between the point of origin and the point of reception
3 (including the use of a like connection in a switching station),
4 furnished or operated by any person engaged in providing or
5 operating these facilities for the transmission of communications,
6 and the term includes any electronic storage of these
7 communications.

8 (b) “Electronic pager communication” means any tone or
9 digital display or tone and voice pager communication.

10 (c) “Electronic cellular telephone communication” means any
11 cellular or cordless radio telephone communication, except that it
12 does not include a confidential communication between parties
13 conducted only in the presence of one another that is intercepted
14 by a cellular or cordless radio telephone or similar device used for
15 the sole purpose of eavesdropping upon or recording that type of
16 communication.

17 (d) “Aural transfer” means a transfer containing the human
18 voice at any point between and including the point of origin and
19 the point of reception.

20 ~~SEC. 3.—Section 632.8 is added to the Penal Code, to read:~~

21 ~~632.8.—(a) A provider of embedded automotive telematic~~
22 ~~services shall not collect, sell, share, transfer, or otherwise disclose~~
23 ~~nonpublic personal information without the explicit prior consent~~
24 ~~of the consumer to whom the nonpublic personal information~~
25 ~~relates, offered in a clear and conspicuous manner, unless the~~
26 ~~disclosure is necessary to effect, administer, or enforce an~~
27 ~~agreement with the consumer. If the disclosure is made, the use of~~
28 ~~the nonpublic personal information shall be limited to that~~
29 ~~information necessary to effect, administer, or enforce the~~
30 ~~agreement.~~

31 ~~(b) For the purposes of this section the following definitions~~
32 ~~shall apply:~~

33 ~~(1) (A) “Nonpublic personal information” means personally~~
34 ~~identifiable information (1) provided by a consumer to a provider~~
35 ~~of embedded automotive telematic services, (2) resulting from any~~
36 ~~transaction with the consumer or any service performed for the~~
37 ~~consumer, or (3) otherwise obtained by the provider of embedded~~
38 ~~automotive telematic services. Nonpublic personal information~~
39 ~~shall include any list, description, or other grouping of consumers;~~

1 and publicly available information pertaining to them, that is
2 derived using any nonpublic personal information.

3 (B) Nonpublic personal information does not include publicly
4 available information that is generally and readily made available
5 to the general public from federal, state, or local government
6 records, or disclosures that are required to be made by federal,
7 state, or local law or court order, or obtained from a publicly
8 available directory where the consumer has voluntarily consented
9 to have the information publicly disseminated or listed, such as a
10 name, address, or telephone number.

11 (2) “Personally identifiable information” means information
12 that (A) a consumer provides to obtain a product or service, (B)
13 about a consumer resulting from any transaction involving a
14 product or service between the provider of embedded automotive
15 telematic services and a consumer, or (C) that the provider of
16 embedded automotive telematic services otherwise obtains about
17 a consumer in connection with providing a product or service to
18 that consumer.

19 (3) “Necessary to effect, administer, or enforce” means the
20 following:

21 (A) The disclosure is required, or is a usual, appropriate, or
22 acceptable method to carry out the transaction or the product or
23 service business of which the transaction is a part, and record or
24 service or maintain the consumer’s account in the ordinary course
25 of providing the embedded automotive telematic services, or to
26 administer or service benefits or claims relating to the transaction
27 or the product or service business of which it is a part.

28 (B) The disclosure is required or is one of the lawful or
29 appropriate methods to enforce the rights of the provider of
30 embedded automotive telematic services or of other persons
31 engaged in carrying out or providing the product or service.

32 (C) The disclosure is required, or is a usual, appropriate, or
33 acceptable method, in connection with the authorization,
34 settlement, billing, processing, clearing, transferring, reconciling,
35 or collection of amounts charged, debited, or otherwise paid using
36 a debit, credit or other payment card, check, or account number,
37 or by other payment means.

38 (D) The disclosure is otherwise required or specifically
39 permitted by federal or state law.

1 ~~(4) As used in this section, “embedded automotive telematic~~
2 ~~device” means any system or device that is integrated into a~~
3 ~~vehicle and combines wireless voice and data communication~~
4 ~~systems in order to aurally provide a vehicle occupant with~~
5 ~~information and services from a central service center, and to~~
6 ~~provide the central service center with information regarding the~~
7 ~~vehicle, including automatic airbag deployment notification,~~
8 ~~vehicle tracking, personalized information, real-time traffic data,~~
9 ~~roadside assistance, and entertainment.~~

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